CITIZEN ADVISORY COMMITTEE RETREAT
ISSUE H - TRADING

Should compliance with the proposed mercury rules include provision for emission reduction credits created from mercury product collection projects or pollution reduction projects?

ALTERNATIVES:

1. Eliminate small source trading (mercury product collection) provision; leave large source trading provision as is. Give credit to sources that made reductions after the baseline years but before rule promulgation.
2. Over the life of the rule phase out the trading program.
3. Do not include mercury containing product reduction program and limit the ability to meet emission reduction requirements by obtaining certified emission reductions from others to 20%.
4. Create an initial pool of emission reduction credits at rule start-up.
5. Eliminate trading provision entirely.
6. Proceed with the trading provisions as outlined in the proposed rules.
7. Limit use of emission credits to an approved variance to a mercury reduction requirement.
8. Do not set limits on the use of certified emission reduction credits.

COMMITTEE DISCUSSION:

The committee is not in agreement that trading of emission credits should be an option in the proposed rules. Some committee members would very reluctantly accept emission credit trading, with restrictions (Alternatives 2., 3., and 7.). Other committee members believe that the compliance flexibility provided by an emission credit trading option is important and that trading is a necessary component of the proposed rules particularly because mercury controls are in the early stages of development. The emission credit provision is also viewed as a way to encourage mercury emission reductions from non-utility sources. For many committee members the specifics of a trading program are dependent upon how other parts of the proposed rules are finalized.

There was some support for Alternative 4. if the mercury product collection program was eliminated and the period of time that emission credits could be claimed was extended. Currently the proposed rules will only consider emission credits for actions that occur after the rule promulgation date. Under this addition to Alternative 4., the period of time to consider reductions would extend back to the baseline years. This combination of Alternatives 1. and 4. was viewed as a way to improve the viability of the emission credit provisions in the proposed rules.

PROVISIONS IN THE PROPOSED RULE:

NR 446.10 Compliance alternatives and reporting requirements. Allows a major utility to use certified emission reductions to achieve up to 50% of a mercury reduction requirement. This is further limited by only allowing up to 25% of the reduction requirement from a mercury product collection project and up to 25% of the reduction requirement from a pollution reduction project.

Major stationary sources may also use certified emission reductions to maintain compliance with a baseline mercury emission limit. There is no restriction on the amount of certified emission reduction credits that can be used by a major stationary source to achieve compliance.

A major utility or major stationary source has until August 1st to achieve compliance with a previous year's requirement.

NR 446.07 Mercury-containing products reduction projects. Projects that collect 50 pounds or more annually can be considered. Only a portion of the collected mercury will be certified as an emission reduction. Studies in Minnesota indicate that a good collection program may prevent 10% of the collected material from becoming an air emission.

NR 446.08 Pollution reduction projects. Projects that result in mercury emission reductions beyond what is required in local, state or federal requirements may be eligible to become certified emission reduction credits that can be used to meet requirements in the proposed rules. These provisions allow the department to consider

NR 446.09 Registry of certified emission reductions. This is a registry that would record activity related to certified emission reductions including the availability and use of credits. The department would be responsible for maintaining and updating this registry.

ADDITIONAL BACKGROUND:

The Natural Resources Board requested that the proposed rules have provision for an emission trading and banking system as well as providing alternative compliance options, such as projects that achieve mercury emission reductions from sources not covered in the rules.

The Technical Advisory Group is preparing a brief on emission credits that relates to this issue.

SUMMARY OF PUBLIC COMMENT:

Wisconsin Public Service Corporation – The mercury-containing products reduction projects section appears to have been written to discourage rather than encourage any programs to remove mercury. It limits projects to those that remove 50 lb. or greater annually, it penalizes those who have embarked on effective mercury removal projects in the past and it requests information that contain estimates whereupon the Department apparently will exercise its judgment on how to determine what credit these programs will yield. This section should be developed with the intent of encouraging mercury removal and recognizing efforts that are ongoing and have occurred at least since the baseline years.

Sierra Club – Trading needs to be severely restricted or not allowed. A trading program allows a facility to reduce their pollution on paper but not from their smokestacks. Toxic hotspots, where more mercury pollution can occur, threaten the health of local residents and the environment.

Wisconsin Paper Council - We have several questions regarding the proposed mercury reduction registry. The sizes of mercury reductions that can be registered appear to be limited by NR 446.07 relating to mercury-containing product reduction projects and NR 446.08 relating to pollution reduction projects. It appears that industrial source mercury reduction efforts would fall under the definition of pollution reduction projects. These projects are subject to a five-pound minimum mercury reduction. Our mercury re-estimates identified several paper industry sources

that are less than five pounds. We are not aware of any technical basis for the five-pound threshold. We recommend that this threshold be lowered to one pound.

The only pollution reduction projects that may be registered are those that begin after the effective date of the rule. This would prevent Appleton Coated from registering a very significant mercury reduction that occurred after the baseline period, but before the effective date of the rule. Companies should be allowed to register pollution reduction projects that have occurred any time after the baseline period.

Wisconsin Electric - Supports alternative compliance mechanisms including trading and other market-based mechanisms (including credits for early reduction) that allow affected sources to achieve reductions cost-effectively. Averaging and trading provisions are critical components of a phased reduction program because of the impossibility of achieving a uniform level of control at all plants.

The proposed rule allows for the creation of Certified Emission Reduction Credits. We agree with the provision and support it on the basis that there may be more cost-effective means to reduce mercury in the environment. These credits would also be likely to be viewed and utilized by affected sources as a contingency for compliance assurance.

The development of a separate Certified Emission Reduction Registry is, however, regulatory duplication. The Department has already received authority to create an emission registry in NR437 under authority granted by §285.78, which was enacted in 2000. There also appears to be a three year lag between mercury rule promulgation and establishment of the proposed Certified Emission Registry (see NR446.09). The need for this delay is unclear given the availability of NR437.
Wisconsin Electric has been an active participant in the Advisory Committee convened to develop rules that define the structure and implementation of the NR437 emission registry. We have advocated that this registry be used to encourage and track emission reductions for subsequent application in DNR regulatory programs. The mechanism for the mercury emission registry proposed in this rules is already under development, and is scheduled for completion in 2002. Developing a separate registry in NR446 is therefore unnecessary and duplicative.

Finally, provisions have been drafted in that establish expected mercury reductions from mercury containing product reduction projects. However, the provisions specify that application for certified mercury reductions would not be accepted by the Department until three years after the mercury rules are enacted. It is inconsistent that the proposed rule places so much emphasis on early action, and on the state taking a leadership role in reducing mercury, but then restricts sources from applying for authorized reductions for three years. The Department should accept application for certified emission reductions concurrent with rule promulgation.

Alliant Energy – The mercury containing products reduction projects provision should be changed to allow credit for any reduction in multi-media mercury releases in order to provide incentive to undertake these efforts. This program should also include the ability to take credit for voluntary releases that have already occurred as opposed to once the rules become effective. This is a very limited option given that many local counties have already undertaken extensive voluntary mercury-reduction projects. The 50 lb. threshold to qualify projects is too high, further severely limiting this as a meaningful alternative and should be revised to 0.5 lb. which would be consistent with the level at which mercury is tracked for federal Toxic Release Reporting requirements. Finally, the DNR's evaluation of costs fails to recognize the significant time and effort involved in completing this type of project and the magnitude of collection that will be necessary to obtain any substantive credits.

Pollution reduction projects should also be expanded to include multi-media projects with a lower minimum threshold of 0.5 lb., instead of 5.0 lb. There are too many restrictions regarding the registration and use of credits from pollution reduction projects

The rules should have provisions in-place to ensure that a registry is available as soon as possible so that voluntary reductions can be recorded. The rules also will need to clarify the role of the NR446 registry and the voluntary registry that is currently proposed under NR437 and should also clarify the procedures for ensuring the registry is current - especially during the March-August reconciliation period. As done for other state-level emissions trading programs, it is imperative that this section includes provisions for a "set-aside" which would maintain sufficient reduction credits to cover future industrial growth needs or prevent shutdown of a plant solely as a result of achieving compliance with this regulation. Similarly, with the very low quantities of available mercury reductions anticipated to be available, this could lead to an extremely tight market and this rule has no mechanisms to prevent price gouging by credit-holders.

Wisconsin's Environmental Decade - Under the DNR's guidelines, utilities are allowed to get 25% of total mercury reductions through mercury containing products reduction projects. Although DNR staff has anecdotally mentioned that ten pounds of mercury collected (from a thermometer take-back program, for example) would equal one pound of smokestack emissions, comparing mercury-containing products to direct emissions into the air is similar to comparing apples and oranges. The potential for smokestack emissions to reach surface waters is remarkably higher.

While we strongly support the removal of mercury containing products from the home and the marketplace, we are concerned that this provision may have a negative effect on the overall reduction of utility mercury pollution. If this aspect of the rule remains unchanged, it further illustrates the ease with which utilities can comply with the rule.

As with the small source provision, the rule allows utilities to get 25% of their total reductions by trading with other large sources. The most obvious benefit of this aspect of the rule is the elimination of mercury emissions from the Vulcan plant in Port Edwards. However, this provides both another opportunity to pass the mercury reduction buck to other industries and exemplifies the flexibility of compliance options. Adding the small and large source trading provisions, it is likely that utilities may have to achieve much less than 90% reductions from their coal-burning power plants. A scenario such as this is unacceptable; coal plants remain the largest source of mercury and the only source that is completely unregulated. Because of this, trading needs to be severely restricted or not allowed.

Ed Wilusz – WPC
We request that this paper include a discussion on the viability of a Wisconsin-only trading program. We have serious concerns about the viability of such a program. In particular, a viable trading program requires a sufficient number of buyers and sellers. It is highly unlikely that this will occur in Wisconsin. Most likely, there will be one large seller of mercury emission credits and perhaps a few additional sellers of small amounts of credits. The potential number of buyers is unclear, but will be limited in two ways. First, section 112 does not allow the use of trading to comply with federal MACT standards. Second, we expect that most (possibly all) companies subject to reduction requirements will take the steps necessary to meet the requirements without the use of purchased credits (for reasons of economic security and compliance with MACT). Any credits generated by over-compliance will likely be retained as a compliance cushion and to accommodate future growth. Overall, there would probably be few sellers and few buyers.

For industrial facilities subject to mass cap requirements, the only way for these facilities to increase capacity beyond baseline levels would be to purchase credits or install controls (which are economically infeasible). The most likely seller of credits is a supplier to the paper industry. A Wisconsin-only trading program could, in effect, give control of the paper industry's economic growth in this state to one company. Government should not be creating this type of relationship through regulation.

The dangers of a trading program that relies on a single large seller of credits was recently shown in New Jersey. There, one large utility generated and sold credits to other companies that were used for compliance. Recently, the large seller of credits signed an agreement with EPA to eliminate all credits – leaving the purchasing companies high and dry. This is a dangerous situation that should be avoided in Wisconsin.

The paper should also explain the federal restriction on the use of trading for the purpose of complying with section 112 MACT standards.

COMMITTEE MEMBER INTERESTS:

Mark Yeager - ECCOLA – With all due respect to the Natural Resources Board request for a trading provision, trading undermines the goal and spirit of a rule designed to reduce Hg contamination in our soil, water, and air. Business health must not be promoted at the expense of human health. No smokestack emissions should be offset by product collection. Resources for thermometer collections must not be at the expense of real emission reduction. If trading emerges trade only airborne for airborne emissions. Product removal need not be the charge of the business community and therefore they need not suffer proposed limitations (greater than 50 lb. annually). Product reduction can be accomplished through vigorous public and community education and participation programs. Recognize that a voluntary approach by utilities/industry has always been an available opportunity yielding negligible results.

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